

1 MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
2 JACOB BUNDICK, ESQ.
Nevada Bar No. 9772
3 Landon Lerner, ESQ.
Nevada Bar No. 13368
4 GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway
5 Suite 400 North
Las Vegas, Nevada 89169
6 Telephone: (702) 792-3773
Facsimile: (702) 792-9002
7 Emails: ferrariom@gtlaw.com
bundickj@gtlaw.com

8 *Counsel for Defendants Hakkasan Limited*
9 *and Angel Management Group*

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 MICHELLE McKENNA, an individual,
14
15 Plaintiff,

16 v.

17 HAKKASAN LIMITED, a foreign
corporation; ANGEL MANAGEMENT
18 GROUP, a Nevada corporation; DOES I
through X inclusive; and ROE
19 CORPORATIONS I-X, inclusive,
20 Defendants.

CIVIL NO. 2:14-cv-01222-GMN-GWF

~~PROPOSED~~ **QUALIFIED PROTECTIVE ORDER**
PURSUANT TO C.F.R. §164.512

Greenberg Traurig, LLP
3773 Howard Hughes Parkway - Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

1 WHEREAS, Defendants are seeking the production of Plaintiff's medical records which
2 contain information protected by the Health Insurance Portability and Accountability Act of
3 1996 ("HIPAA");

4 WHEREAS, Plaintiff has put her medical history in issue such that discovery of her
5 medical records is necessary for Defendants to prepare their defense of the above-captioned
6 action;

7 WHEREAS, in order to prevent any misuse or unnecessary disclosure of Plaintiff's
8 medical records; and

9 WHEREAS, 45 C.F.R. § 164.512 expressly allows for the disclosure of a patient's health
10 information in the course of any judicial proceeding either in response to (1) a discovery
11 request where the parties have agreed upon a protective order and have presented it to the
12 Court or (2) a court order;

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the following procedures designed to
14 ensure the protection of Plaintiff's medical records shall govern all proceedings in the above-
15 captioned action:

16 1. The "Action" shall mean the above-captioned case, *Mc.Kenna v. Hakkasan*
17 *Limited and Angel Management Group*, Case No. 2:15-cv-00567-KJD-CWH in the United States
18 District Court, District of Nevada.

19 2. "Documents" or "Information" shall mean and include any documents (whether
20 in hard copy or electronic form), records, correspondence, analyses, assessments, statements
21 (financial or otherwise), responses to discovery, tangible articles or things, whether
22 documentary or oral, and other information provided, served, disclosed, filed, or produced,
23 whether voluntarily or through discovery or other means, in connection with this Action. A
24 draft or non-identical copy is a separate document within the meaning of these terms.

25 3. "Party" (or "Parties") shall mean one party (or all parties) in this Action, and
26 their in-house and outside counsel. Any "Party" that is a corporate or limited liability entity
27 shall only include upper level management officers and personnel that are supporting
28 witnesses to the Party in this Action.

1 4. “Producing Party” shall mean any person or entity who provides, serves,
2 discloses, files, or produces any Documents or Information, including third parties.

3 5. “Receiving Party” shall mean any person or entity who receives any such
4 Documents or Information.

5 6. In conjunction with the discovery proceedings in this Action, a Producing Party
6 may designate any Document, thing, material, testimony, or other Information derived
7 therefrom as “Confidential” under the terms of this Qualified Protective Order (hereinafter
8 “Order”). Anything designated as Confidential shall not be provided or made available to third
9 parties except as permitted by, and in accordance with, the provisions of this Order.
10 Confidential Information is Information that has not been made public and contains trade
11 secret, proprietary and/or sensitive business or personal information, including personal
12 medical Information.

13 7. Confidential Documents shall be so designated by marking or stamping each
14 page of the Document produced by or received from a Producing Party with the legend
15 “Confidential” or by including the word “Confidential” in the name of a natively produced
16 Document and by including a field for any Confidential designations in the corresponding
17 load-file.

18 8. Testimony taken at a deposition may be designated as Confidential by any Party
19 making a statement to that effect on the record at the deposition or within ten (10) business
20 days of receipt of the transcript. Arrangements shall be made with the court reporter taking
21 and transcribing such deposition to separately bind such portions of the transcript and
22 deposition exhibits containing Information designated as Confidential, and to label such
23 portions appropriately. Counsel for the Parties may also designate an entire deposition
24 transcript as Confidential at the time of the deposition or within ten (10) business days of
25 receipt of the transcript. All testimony taken from the time of the deposition until the
26 transcript is issued by the Court reporter shall be presumed Confidential during this interim
27 period, with such confidentiality designation to expire if no Party designates the testimony
28 Confidential within the 10 business days as required by this Paragraph.

1 9. Confidential Information shall be maintained in strict confidence by the Parties who
2 receive such information, shall be used solely for the purposes of this Action, and shall not be
3 disclosed to any person except:

- 4 a. The United States District Court, District of Nevada, or any other court to which this
5 matter may be transferred (the “Court”), and persons assisting the Court or assisting
6 in the litigation process (including, but not limited to, Court personnel, court
7 reporters, stenographic reporters, videographers, and electronic filing personnel);
- 8 b. In the event of an appeal, the United States Court of Appeals (the “Appellate Court”) and/or the United States Supreme Court (the “Supreme Court”) and persons assisting
9 the Appellate Court, or the Supreme Court or assisting in the litigation process
10 (including, but not limited to, Appellate and Supreme Court personnel, court
11 reporters, stenographic reporters, videographers, and electronic filing personnel).
- 12 c. The attorneys of record in this Action and their co-shareholders, co-directors,
13 partners, employees, and associates who are assisting in the Action (collectively
14 hereafter referred to as “Outside Counsel”);
- 15 d. A Party, or an officer, director, or employee of a Party or of a Party’s affiliate, as
16 long as any such person agrees to be bound by the terms and conditions of this
17 Order;
- 18 e. Subject to the terms of this Order, experts or consultants and their staff, and litigation
19 support personnel and their staff, retained by the Parties and/or Outside Counsel in
20 this Litigation for the purposes of this Litigation;
- 21 f. Support vendors or contractors retained by the Parties and/or Outside Counsel for
22 functions directly related to this Action, such as copying, document management,
23 and graphic design; and
- 24 g. Any other person, provided written notice is given to the other Party of an intent to
25 disclose specified Confidential Information to said person, who shall be identified by
26 name, address, phone number, and relationship, if any, to the Receiving Party, and
27 no written objection is provided to the disclosure within ten (10) business days of
28

1 delivery of the notification. In the event of an objection, the Party seeking to prevent
2 disclosure shall have the right to move the Court for a protective order, and no
3 disclosure shall be made pending the resolution of such motion for protective order.
4 Before any person may receive Documents or Information pursuant to this
5 subparagraph, he or she must comply with the requirements of this Order.

6 h. If a witness is providing or has provided Confidential Information during a
7 deposition, counsel for the Producing Party may request that all persons other than
8 the witness and persons entitled by this Order to have access to the Confidential
9 Information leave the deposition room during that portion of the deposition. Failure
10 of any person to comply with such a request will constitute sufficient justification for
11 the witness to refuse to answer the question, or for the Producing Party to demand
12 that Confidential Information not be provided to the witness, pending resolution of
13 the issue.

14 10. All designations of Information as Confidential must be made in good faith.

15 11. A Party may object to the designation of particular Information as Confidential
16 by giving written notice to the Party designating the disputed Information. The written notice
17 shall identify the Information to which the objection is made. If the Parties cannot resolve the
18 objection within ten (10) business days after the time the notice is received, it shall be the
19 obligation of the Party designating the Information as Confidential to file an appropriate
20 motion requesting that the Court determine whether the disputed Information should be
21 subject to the terms of this Order. If such a motion is filed within ten (10) business days after
22 the date the parties fail to resolve the objection, the disputed Information shall be treated as
23 Confidential under the terms of this Order until the Court rules on the motion. If the
24 designating Party fails to file such a motion within the prescribed time, the disputed
25 Information shall lose its designation as Confidential and shall not thereafter be treated as
26 Confidential in accordance with this Order. In connection with a motion filed under this
27 provision, the Party designating the Information as Confidential shall bear the burden of
28 establishing that good cause exists for the disputed Information to be treated as Confidential.

1 12. While protected by this Order, any Information designated Confidential shall be
2 held in strict confidence by each person to whom it is disclosed; shall be used solely for the
3 purposes of this Action; and shall not be used for any other purpose, including, without
4 limitation, any business or competitive purpose or use in any other lawsuit. Documents and
5 Information previously produced by the parties may be designated "Confidential" within 30
6 days after the date of this Order.

7 13. With respect to outside experts or other persons, to become an authorized
8 expert or other person entitled to access to Confidential Information, the expert or other
9 person must be provided with a copy of this Order and must sign a certification
10 acknowledging that he/she has carefully and completely read, understands, and agrees to be
11 bound by this Order. The Party on whose behalf such a Certification is signed shall retain the
12 original Certification.

13 14. Notwithstanding any other provision herein, nothing shall prevent a Party from
14 revealing Confidential Information to a person who created or previously received (as an
15 addressee or by way of copy) such Information.

16 15. The inadvertent production of any Information without it being properly
17 marked or otherwise designated shall not be deemed to waive any claim of confidentiality
18 with respect to such Information. If a Producing Party, through inadvertence, produces any
19 Confidential Information without marking or designating it as such in accordance with the
20 provisions of this Order, the Producing Party may, promptly on discovery, furnish a substitute
21 copy properly marked along with written notice to all Parties (or written notice alone as to
22 non-documentary Information) that such Information is deemed Confidential and should be
23 treated as such in accordance with the provisions of this Order. Each Receiving Party must
24 treat such Information as Confidential in accordance with the notice from the date such notice
25 is received. Disclosure of such Confidential Information prior to the receipt of such notice
26 shall not be deemed a violation of this Order. A Receiving Party who has disclosed such
27 Confidential Information prior to the receipt of such notice shall take steps to cure such
28

1 disclosure by requesting return of the original document and substituting it with the properly
2 marked one.

3 16. A copy of this Order shall be shown to each attorney acting as counsel for a
4 Party and to each person to whom Confidential Information will be disclosed.

5 17. Nothing in this Order shall be construed as an admission or agreement that any
6 specific Information is or is not confidential, subject to discovery, relevant, or admissible in
7 evidence in this Action or any other proceeding.

8 18. If Confidential Information is contained in any brief or other paper to be filed in
9 the public record of the Court by a Party, the Confidential Information will be redacted from
10 such brief or other paper and shall be appropriately marked and filed under seal. A motion to
11 file under seal shall be made in compliance with applicable Court Rules. If such leave is not
12 timely obtained, then the Parties shall confer in good faith to determine how such Information
13 otherwise may be provided to the Court. If the Court ultimately refuses to allow such
14 Information to be filed under seal, then it may be filed not under seal. The foregoing shall not
15 apply to Confidential Information submitted to the Court in the parties' Confidential
16 Settlement Statements, if applicable.

17 19. This Order shall not be construed to prevent any Party from making use of or
18 disclosing Information that was lawfully obtained by a Party independent of discovery in this
19 Action, whether or not such material is also obtained through discovery in this Action, or from
20 using or disclosing its own Confidential Information as it deems appropriate.

21 20. If either Party becomes required by law, regulation, or order of a court or
22 governmental entity to disclose any Confidential Information that has been produced to it
23 under the terms of this Order, such Party will reasonably notify the other Parties, in writing,
24 so that the Parties have an opportunity to prevent or restrict such disclosure. The Party
25 required to disclose any Confidential Information shall use commercially reasonable efforts to
26 maintain the confidentiality of such Confidential Information and shall cooperate with the
27 other Parties to obtain a protective order or other protection limiting disclosure; however, the
28 Party required to disclose the Information shall not be required to seek a protective order or

1 other protection against disclosure in lieu of, or in the absence of, efforts by the other Parties
2 seeking to prevent disclosure to do so.

3 21. Upon termination of this Action, any Party and its counsel that obtained
4 Confidential Information through discovery shall, certify as to its destruction. Counsel may
5 retain Confidential Information solely for archival purposes or as otherwise required by law.
6 The restrictions of this Order shall apply to Counsel for as long as they hold such archival
7 Documents.

8 22. The obligation to treat all Information designated as Confidential in accordance
9 with the terms of this Order and not to disclose such Confidential Information shall survive
10 any settlement or other termination of this Action.

11 23. The inadvertent production of any Information during discovery in this Action
12 shall be without prejudice to any claim that such Information is subject to the attorney-client
13 privilege or is protected from discovery as attorney work product. No Party shall be held to
14 have waived any rights by such inadvertent production. Upon notification of inadvertent
15 production, the Receiving Party shall not use or divulge the contents of such Information
16 unless subsequently agreed to by the Parties or permitted by the Court. Any such
17 inadvertently produced Information shall be returned by the Receiving Party within three
18 business days of any written request therefore. The Receiving Party retains the right to
19 challenge the Information as not privileged or otherwise protected and discoverable.

20 24. This Order may be modified by the Court at any time, by stipulation, or for good
21 cause.

22 **IT IS SO ORDERED.**

23 DATED this 10th day of November, 2015.

24
25 
26 **GEORGE FOLEY, JR.**
27 **United States Magistrate Judge**
28